

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MANJAN A. CHOWDHURY, Derivatively
on Behalf of Nominal Defendant
PLAYAGS, INC.,

Plaintiff,

v.

DAVID LOPEZ, KIMO AKIONA, DAVID
SAMBUR, DANIEL COHEN, ERIC
PRESS, YVETTE E. LANDAU, ADAM
CHIBIB, GEOFF FREEMAN, and ANNA
MASSION,

Defendants,

and

PLAYAGS, INC., a Nevada Corporation,

Nominal Defendant.

Case No. 2:22-cv-00489-ART-DJA

ORDER APPROVING

**STIPULATION TEMPORARILY
STAYING ACTION**

(FIRST REQUEST)

Plaintiff Manjan A. Chowdhury (“Plaintiff”), Defendants David Lopez, Kimo Akiona, David Sambur, Daniel Cohen, Eric Press, Yvette E. Landau, Adam Chibib, Geoff Freeman, and Anna Massion (“Individual Defendants”), and Nominal Defendant PlayAGS, Inc. (“PlayAGS”; together with Individual Defendants, the “Defendants”)—collectively, the “Parties”—jointly submit this Stipulation and (Proposed) Order Temporarily Staying Action (the “Stipulation”) to

1 temporarily stay the above-captioned derivative action (the “Action”), and in support thereof state
2 as follows:

3 WHEREAS, Plaintiff filed the above-captioned action allegedly on behalf of and for the
4 benefit of PlayAGS against the Individual Defendants seeking to remedy the Individual
5 Defendants’ alleged breach of fiduciary duties, and against Defendants Lopez and Akiona for
6 contribution under Sections 10(b) and 21D of the Securities Exchange Act of 1934 (“Exchange
7 Act”);

8 WHEREAS, pending in the United States District Court for the District of Nevada is a
9 related putative securities class action captioned: *In re PlayAGS, Inc. Securities Litigation*, Case
10 No. 2:20-cv-01209-JCM-NJK (the “Securities Class Action”);

11 WHEREAS, Plaintiff maintains that the Action has merit independent of and is not
12 dependent on the ultimate outcome of the Securities Class Action;

13 WHEREAS, there is substantial overlap between the facts and circumstances alleged in the
14 Action and the Securities Class Action, including the relevance of many of the same documents
15 and witnesses;

16 WHEREAS, the defendants in the Securities Class Action filed a motion to dismiss the
17 Second Amended Consolidated Class Action Complaint for failure to state a claim on May 24,
18 2021, and that motion was fully briefed as of September 13, 2021;

19 WHEREAS, the Parties agree that a decision on the pending motion to dismiss the
20 Securities Class Action could have important implications for the efficient prosecution of the
21 Action;

22 WHEREAS, pursuant to the Private Securities Litigation Reform Act (“Reform Act”), 15
23 U.S.C. § 78u–4(b)(3)(B), “all discovery and other proceedings shall be stayed during the pendency
24 of any motion to dismiss” and, as a result, until the court decides the defendants’ motion to dismiss
25 the Securities Class Action, the Securities Class Action will be stayed;

26 WHEREAS, on April 22, 2022, the Parties in the Action submitted a Stipulation and
27 (Proposed) Order (First Request) seeking (i) to extend the deadline for Defendants to respond to
28

1 the Complaint until after the Parties could meet and confer, (ii) to adjourn the deadlines under Rule
 2 26(f) and Local Rule 26-1 until after the Parties could meet and confer, and (iii) for the Parties to
 3 meet and confer within thirty (30) days from the Court so-ordering the Stipulation (ECF No. 5.);

4 WHEREAS, on May 2, 2022, the Court issued an Order granting in part and denying in part
 5 the April 22, 2022 stipulation, and ordering the Parties to meet and confer by June 1, 2022, conduct
 6 their Rule 26(f) conference by June 15, 2022, and file their discovery plan by June 29, 2022 (ECF
 7 No. 6);

8 WHEREAS, on May 9, 2022, counsel for Plaintiff sent a request for waiver of service to
 9 counsel for Defendants and Nominal Defendant PlayAGS, which counsel for Defendants executed
 10 (*see* ECF No. 11);

11 WHEREAS, on May 10, 2022, the Parties filed a Joint Notice of Related Cases Pursuant to
 12 Local Rule 42-1 (ECF No. 7) in both the Action and the Securities Class Action, notifying the Court
 13 that the two actions are related and seeking to have the Action assigned to District Judge James C.
 14 Mahan and Magistrate Judge Nancy J. Koppe, before whom the Securities Class Action is already
 15 pending;

16 WHEREAS, on May 18, 2022, the Action was reassigned to District Judge Anne R. Traum
 17 in order to create her caseload (ECF No. 8);

18 WHEREAS, on May 24, 2022, the Parties filed an Amended Joint Notice of Related Cases
 19 Pursuant to Local Rule 42-1 (ECF. No. 12) in both the Action and the Securities Class Action,
 20 notifying the Court that the two actions are related and seeking to have the Action assigned to
 21 District Judge James C. Mahan and Magistrate Judge Nancy J. Koppe, before whom the Securities
 22 Class Action is already pending;

23 WHEREAS, the Parties recognize that this Court has wide discretion in controlling its
 24 docket, including staying discovery or the entire action where there is overlap with another
 25 proceeding.¹ In maintaining its docket, the Court is guided by Federal Rule of Civil Procedure 1

26
 27 ¹ *See, e.g., Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936) (“[T]he power to stay
 28 proceedings is incidental to the power inherent in every court to control the disposition of the causes
 on its docket with economy of time and effort for itself, for counsel, and for litigants.”); *Lockyer v.*
Mirant Corp., 398 F.3d 1098, 1109 (9th Cir. 2005) (“A district court has discretionary power to

1 requiring that the rules “be construed, administered, and employed by the court and the parties to
 2 secure the just, speedy, and inexpensive determination of every action and proceeding.” FRCP 1;
 3 *see also* L.R. 1-1(a) (“These rules will be administered in a manner to secure the just, speedy, and
 4 inexpensive determination of every action and proceeding.”). In emphasizing the importance of
 5 this goal, this Court has expressly stated its commitment “to assisting attorneys and parties in
 6 reducing costs in civil cases,” and reiterated “the obligation of attorneys, as officers of the court, to
 7 work toward the prompt completion of each case and to minimize litigation expense.” L.R. 1-1(b).
 8 The Court has also emphasized that “[e]ffective advocacy depends on cooperative use of these rules
 9 to manage cases in a cost-effective manner.” *Id.*

10 WHEREAS, in order to ensure economy of time and effort for the Court, for counsel, and
 11 for litigants, Plaintiff and Defendants have agreed that, in light of the significant overlap between
 12 the Action and the Securities Class Action, and in light of the stay of proceedings which
 13 commenced by operation of law following the filing of the motion to dismiss the Securities Class
 14 Action, that the Action should be temporarily stayed on the terms set forth below unless and until
 15 either (1) the Securities Class Action is dismissed, with prejudice, and all appeals related thereto
 16 have been exhausted; or (2) the pending motion to dismiss the Securities Class Action is denied in
 17 whole or in part such that the Reform Act stay dissolves as a matter of law; or (3) any of the Parties
 18 to this Stipulation gives a fifteen (15) day notice in writing via email to opposing counsel that they
 19 no longer consent to the voluntary stay of the Action; and

20 WHEREAS, the Parties’ joint request to temporarily stay the proceedings is not sought for
 21 the purpose of delay or any other improper purpose, and the Parties submit that good cause exists
 22 to temporarily stay the Action as set forth herein;

23 NOW THEREFORE, it is hereby stipulated by and between the undersigned, subject to the
 24 Court’s approval, that:

25
 26
 27 stay proceedings in its own court under [*Landis*]”); *see also Nelson v. Safeco Ins. Co. of Illinois*,
 28 No. 2:10-CV-00241-JCM, 2011 WL 13848, at *1 (D. Nev. Jan. 4, 2011) (“The court has broad
 discretion in controlling discovery.”).

1 1. The Action shall be temporarily stayed, and all case deadlines set by rule or by
2 previous order of the Court shall be vacated, upon the Court's approval of this Stipulation as an
3 Order of the Court.

4 2. The Parties agree that notwithstanding this stay of the Action, Plaintiff may file an
5 amended complaint; however, Defendants need not answer or otherwise respond to the Complaint
6 or to any other complaint or amended complaint that is filed in or consolidated with the above-
7 captioned action during the pendency of this stay.

8 3. Upon occurrence of any of (1) the dismissal of the Securities Class Action, with
9 prejudice, and exhaustion of all appeals related thereto; or (2) the denial of any motion to dismiss
10 the Securities Class Action in whole or in part such that the Reform Act stay dissolves as a matter
11 of law; or (3) fifteen (15) days after any of the Parties to this Stipulation has given notice in writing
12 via email to opposing counsel that they no longer consent to the voluntary stay of the Action, then
13 the stay shall be lifted and the Parties shall notify the Court within fifteen (15) days after the
14 occurrence of any of the events above that the stay has been lifted.

15 4. Within 30 days after the stay is lifted as a result of one of the events detailed in
16 paragraph 3, the Parties shall meet and confer and submit a proposed schedule to the Court for
17 Defendants' response to the Complaint and other deadlines.

18 5. The Parties shall submit a Joint Status Report to the Court every ninety (90) days
19 following approval of this Stipulation as an Order of the Court, to advise the Court as to the status
20 of the Securities Class Action.

21 6. Defendants shall promptly notify Plaintiff in the event any other factually related
22 stockholder derivative proceedings are initiated, including but not limited to the filing of a
23 summons and complaint derivatively on behalf of PlayAGS based on the same or similar set of
24 factual allegations as alleged in this Action.

25 7. This stay shall not apply to any motions, stipulations, or any other related filings
26 pertaining to consolidation of related shareholder derivative actions and/or appointment of lead
27 plaintiff(s) and lead and liaison counsel(s).
28

8. If, during the pendency of the stay, a mediation or formal settlement conference is held in effort to settle the Securities Class Action or any factually related derivative action, Defendants shall provide Plaintiff with reasonable advance notice of, and invite Plaintiff to, the mediation.

DATED this 6th day of June, 2022.

**BROWNSTEIN HYATT FARBER
SCHRECK, LLP**

BY: /s/ Kirk B. Lenhard
KIRK B. LENHARD, ESQ., Bar No. 1437
100 N. City Parkway, Suite 1600
Las Vegas, NV 89106
Email: klenhard@bhfs.com

BAKER & HOSTETLER LLP

DOUGLAS W. GREENE, ESQ.
(*pro hac vice* forthcoming)
45 Rockefeller Plaza
New York, NY 10111
Telephone: 212.589.4200
Facsimile: 212.589.4201
Email: dgreene@bakerlaw.com

*Attorneys for Defendants David Lopez, Kimo
Akiona, David Sambur, Daniel Cohen, Eric
Press, Yvette E. Landau, Adam Chibib, Geoff
Freeman, and Anna Massion, and Nominal
Defendant PlayAGS Inc.*

ALDRICH LAW FIRM, LTD.

BY: /s/ Catherine Hernandez
John P. Aldrich, Esq., Bar No. 6877
Catherine Hernandez, Bar No. 8410
7866 West Sahara Avenue
Las Vegas, Nevada 89117

GLANCY PRONGAY & MURRAY LLP

Pavithra Rajesh
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: (310) 201-9150
Facsimile: (310) 201-9160
Email: prajesh@glancylaw.com

Benjamin I. Sachs-Michaels
712 Fifth Avenue
New York, NY 10019
Telephone: 212.935.7400
Facsimile: 212.756.3630
Email: bsachsmichaels@glancylaw.com

Counsel for Plaintiff Manjan Chowdhury

ORDER

IT IS SO ORDERED.



Anne R. Traum
UNITED STATES DISTRICT JUDGE

DATED: June 9, 2022

STIPULATION AND [PROPOSED] ORDER TEMPORARILY STAYING ACTION